

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOBBY DARRELL COLBERT,

CASE NO. C24-2143JLR

Petitioner,

## ORDER

V.

SCOTT SPEER,

### Respondent.

## I. INTRODUCTION

Before the court is United States Magistrate Judge Brian A. Tsuchida's report and recommendation, in which he recommends that the court dismiss with prejudice Petitioner Bobby Darrell Colbert's 28 U.S.C. § 2254 petition for a writ of habeas corpus.

<sup>1</sup> Mr. Colbert requested habeas relief under 28 U.S.C. § 2241. (*See generally* Petition.) However, as Magistrate Judge Tsuchida stated in his report and recommendation, Mr. Colbert seeks to challenge a sentence imposed by a state court. (*See* RR at 1-2.) Accordingly, the court construes his petition as a request for habeas relief 28 U.S.C. § 2254. *See Dominguez v. Kernan*,

1 objected to the report and recommendation. (Objections (Dkt. # 12); *see also* RR at 4  
2 (setting January 24, 2025 objection deadline).) On February 5, 2025, before the court  
3 considered the report and recommendation, Mr. Colbert moved for relief from judgment  
4 (Mot. (Dkt. # 13)) and filed a notice of appeal to the Ninth Circuit (NOA (Dkt. # 14.)).

5 Having reviewed the report and recommendation, Mr. Colbert's submissions, the  
6 relevant portions of the record, and the governing law, the court ADOPTS Magistrate  
7 Judge Tsuchida's report and recommendation, DISMISSES Mr. Colbert's petition for a  
8 writ of habeas corpus with prejudice, DENIES issuance of a certificate of appealability,  
9 and DENIES Mr. Colbert's motion for relief from judgment.

10 **II. ANALYSIS**

11 A district court has jurisdiction to review a magistrate judge's report and  
12 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court  
13 may accept, reject, or modify, in whole or in part, the findings or recommendations made  
14 by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). An objecting party must file  
15 "specific written objections" to the magistrate judge's report and recommendation. *See*  
16 Fed. R. Civ. P. 72(b)(2). "The district judge must determine de novo any part of the  
17 magistrate judge's disposition that has been properly objected to. The district judge may  
18 accept, reject, or modify the recommended disposition; receive further evidence; or return  
19 the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3); *see also*

20  
21 906 F.3d 1127, 1136 (9th Cir. 2018) ("§ 2254 is the exclusive vehicle for prisoners in custody  
22 pursuant to a state court judgment who wish to challenge anything affecting that custody.")  
(cleaned up).

1 28 U.S.C. § 636(b) (same). In so doing, the district court need not “explicitly address” a  
 2 party’s objections. *United States v. Ramos*, 65 F.4th 427, 437 (9th Cir. 2023). Instead, if  
 3 a district court overrules filed objections, the court need only “indicate[] that it reviewed  
 4 the record de novo, found no merit to . . . [the] objections, and summarily adopt[] the  
 5 magistrate judge’s analysis in [the] report and recommendation.” *Id.* at 433.

6 A report and recommendation is not an appealable order, and thus Mr. Colbert’s  
 7 notice of appeal is premature and does not divest this court of jurisdiction over this  
 8 matter. *See Burnside v. Jacquez*, 731 F.3d 874, 875 (9th Cir. 2013) (“A notice of appeal  
 9 from a magistrate judge’s report and recommendation is ineffective.”); (*see also* RR at 4  
 10 (instructing Mr. Colbert that he “should not file a notice of appeal seeking review in the  
 11 Court of Appeals for the Ninth Circuit until the assigned District Judge enters a judgment  
 12 in the case”)).

13 Here, as Magistrate Judge Tsuchida noted, Mr. Colbert has filed eleven other  
 14 federal habeas petitions in this district challenging his state court conviction and  
 15 sentence, and the court must dismiss Mr. Colbert’s latest successive petition. (*see* RR  
 16 at 2 (citing prior petitions)); *see also* 28 U.S.C. § 2244(b)(2) (requiring courts to dismiss  
 17 successive petitions except to the extent that a petition includes a claim that relies upon  
 18 (a) a new, retroactive, and previously-unavailable rule of constitutional law; or (b) facts  
 19 that could not have been discovered previously through due diligence, and that would  
 20 establish by clear and convincing evidence that no reasonable factfinder would have  
 21 found the applicant guilty of the underlying offense but for constitutional error). Mr.  
 22 Colbert does not direct the court to any new rules of constitutional law or facts that would

1 satisfy the exceptions in 28 U.S.C. § 2244(b)(2). Moreover, Mr. Colbert filed his petition  
2 for a writ of habeas corpus on December 20, 2024, long after the applicable one-year  
3 statute of limitations expired. (See RR at 3 (noting that Mr. Colbert's petition is time-  
4 barred because his direct appeal concluded in 2008 after the Washington Supreme Court  
5 denied discretionary review)); 28 U.S.C. § 2244(d)(1) (providing for a one-year  
6 limitations period for petitions under 28 U.S.C. § 2254).

7 Mr. Colbert's objections do not address either basis for Magistrate Judge  
8 Tsuchida's report and recommendation, and they contain no legal or factual analysis  
9 addressing why the report and recommendation was incorrect. (See *generally*  
10 Objections.) Accordingly, the court overrules the objections. The court adopts the report  
11 and recommendation. The court also denies issuing a certificate of appealability because  
12 Mr. Colbert has not demonstrated that reasonable jurists could disagree either that his  
13 petition was successive or that it was time-barred. *See* 28 U.S.C. § 2253(c); *Miller-El v.*  
14 *Cockrell*, 537 U.S. 322, 327 (2003).

15 Separately, in his motion for relief from judgment, Mr. Colbert asked the court "to  
16 vacate the order adopting [the] report and recommendation" under Federal Rule of Civil  
17 Procedure 60(b)(3) based upon allegations of fraud. (Mot. at 1-2.) However, Mr. Colbert  
18 sought relief before the court adopted Magistrate Judge Tsuchida's report and  
19 recommendation. (See *generally* Dkt.) Because the report and recommendation is not a  
20 final judgment or order, *see Demorest v. Ryan*, 156 F. App'x 931, 932 (9th Cir. 2005)  
21 (noting that "a magistrate judge's report and recommendation" is "a nonfinal order"), the  
22 court denies as premature Mr. Colbert's motion for relief under Rule 60.

### III. CONCLUSION

For the foregoing reasons, the court ORDERS as follows:

1. The court ADOPTS the report and recommendation (Dkt. # 11) in its entirety;
  2. The court DISMISSES Mr. Colbert's habeas corpus petition (Dkt. # 6) with  
ice;
  3. The court DENIES issuance of a certificate of appealability for the reasons set  
above and in the report and recommendation;
  4. The court DENIES Mr. Colbert's motion for relief from judgment (Dkt. # 13);

and

5. The court DIRECTS the Clerk to send copies of this order to Mr. Colbert and Magistrate Judge Tsuchida.

Dated this 7th day of February, 2025.

  
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JAMES L. ROBART  
United States District Judge